

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF2235
)	EEOC NO.: 21BA81194
ALICE WASHINGTON)	ALS NO.: 09-0739
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box, presiding, upon Alice Washington's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF2235; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reason:

1. On February 21, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the State of Illinois Office of the Appellate Defender ("Employer") unlawfully reduced her salary from \$60,400 to \$49,400 on January 16, 2008, because of her sex, Female (Count A), race, Black (Count B), and disability, Stage 2A Infiltrating Lobular Breast Cancer (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act. On December 28, 2009, the Petitioner filed this timely Request. The Respondent filed a Response on January 22, 2010, and on February 1, 2010, the Petitioner filed a timely Reply to the Respondent's Response.
2. The Petitioner worked as a Forensic Social Historian ("FSH") for the Employer's Post Conviction Unit ("PCU") from January 2, 1997 to August 6, 2003.
3. On August 6, 2003, the Petitioner was temporarily transferred to the Employer's Death Penalty Assistance Unit ("DPTA Unit"), where she performed the duties of an Investigator. Additionally,

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent". The party to the underlying charge requested review of the Department's action shall be referred to as the "Petitioner".

from August 2003 to January 2008, the Petitioner continued to receive the FSH salary of \$60,400 per year.

4. On July 16, 2007, the Petitioner was permanently transferred to the DPTA Unit where she continued to work as an Investigator.
5. In early January 2008, the Petitioner and her peers were asked to complete a Needs Assessment Evaluation ("Evaluation") issued by the DPTA Unit's Director of Support Services ("Director"). According to the Employer, during the Evaluation period the Petitioner informed the Director that she was working in the capacity of an Investigator. The Petitioner also noted this on the Evaluation.
6. On January 16, 2008, the Employer subsequently reduced the Petitioner's salary from the FSH salary for 15 years of experience at \$60,400 per year, to that of an Investigator with 15 years of experience at \$49,400 per year.
7. The Employer stated the salary reduction was warranted because a large discrepancy existed between the compensation for the FSH job and the Investigator job. The Employer further stated that other Investigators with 15 years of experience were paid no more than \$49,400 per year.
8. In her charge the Petitioner alleged her salary was reduced because of her sex, race, and disability.
9. In her Request, the Petitioner argues that other employees identified by the Respondent's Investigator as having received salary reductions were not similarly situated to her. The Petitioner states that one of the employees had taken a voluntary pay cut in order to transfer to a lower pay grade position, and the other employee received a salary reduction due to poor work performance. The Petitioner also contends she was transferred to the DPTA Unit because of her sex, her race, and her disability.
10. In its Response, the Respondent asks that its dismissal of all Counts A-C be sustained for Lack of Substantial Evidence. The Respondent argues the Employer articulated a non-discriminatory reason for reducing the Petitioner's salary based on the Employer's good faith belief the Petitioner was working as an Investigator. The Respondent states there is no substantial evidence this articulated reason was a pretext for discrimination. Finally, the Respondent states it lacks jurisdiction over the Petitioner's allegation that she was discriminatorily transferred to the DPTA Unit because that allegation was not raised in the charge currently under review, and she is raising this allegation for the first time in her Request.

11. In her Reply, the Petitioner claims she informed one of the Respondent's intake personnel about her allegations regarding the discriminatory transfer to the DPTA Unit. The Petitioner states that when she filed her charge of discrimination regarding the unlawful transfer with the Equal Employment Opportunity Commission ("EEOC"), the Petitioner was informed by the EEOC intake personnel that the EEOC would communicate this charge to the Respondent. The Petitioner attaches to her Reply documentation from the EEOC which reflects the Petitioner filed a charge of discrimination relative to the alleged discriminatory transfer with the EEOC on March 26, 2008. The EEOC documentation attached to the Reply does not state that the Petitioner intended to amend or otherwise supplement the charge currently under review, which was filed with the Respondent on February 21, 2008.

CONCLUSION

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

First, as to all Counts A-C, there is no substantial evidence of a nexus between the Petitioner's sex, race, or disability, and the salary reduction. In particular the evidence is insufficient to establish even a *prima facie* case of discrimination since there is no evidence that similarly situated investigators with 15 years work experience and who were outside of the Petitioner's protected classes were being paid a higher salary than the Petitioner.

Assuming *arguendo* there was some evidence sufficient to establish the existence of a *prima facie* case of discrimination, the Employer articulated a non-discriminatory reason for the salary reduction, and there is no substantial evidence this was a mere pretext for discrimination. At the time the Employer reduced the Petitioner's salary, she herself admitted she was performing the duties of an Investigator. Based on that admission, the Employer had a good faith basis upon which to determine that the Petitioner should be compensated as an Investigator, and not as a FSH. The Employer was entitled to make this employment decision based on its reasonable belief of the facts. See Carlin v. Edsal Manufacturing Company, IHRC, ALS No. 7321 (May 6, 1996), quoting Homes and Board of County Commissioner, Morgan County, 26 Ill. HRC Rep. 63 (1986). In the absence of any evidence of pretext, the Commission will not substitute its judgment for the Employer's business judgment. See Berry and State of Illinois, Department of Mental Health and Development Disabilities, ___ Ill. HRC Rep. ___, Charge No. 1994SA0240 (December 10, 1997).

Second, the Petitioner's allegations regarding the alleged discriminatory transfer are not before the Commission on this Review. Based on the Petitioner's documentation, it is clear that one month

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after the Petitioner had filed the charge currently under review, the Petitioner filed a new charge discrimination with the EEOC alleging an unlawful transfer to the DPTA Unit. That charge may in fact still be pending with the EEOC. However, the charge currently under review only alleges an unlawful reduction in salary. On a request for review, the Commission has no jurisdiction to review new allegations or charges of discrimination raised for the first time in a request for review. See 775 ILCS 8-103 (West 2010). Therefore, the Commission has no jurisdiction to make any determination regarding the Petitioner's unlawful transfer allegations in this Request because those allegations were not a part of the February 21, 2008, charge of discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the State of Illinois Office of the Appellate Defender as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 14th day of July 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box